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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

REPLY TO MOTION OF APPELLEE TO AFFIRM AND/OR DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 735

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ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

REPLY TO MOTION OF APPELLEE TO AFFIRM AND/OR DISMISS

In its motion to affirm and/or dismiss the appeal in this case, appellee, the State of Louisiana, has largely avoided discussing the errors of constitutional interpretation made by the trial court and the Supreme Court of Louisiana. Appellee has instead attempted to state the facts so as to make it appear that no substantial injustice was done in this case, and counsel for the appellant, Rev. Cox, would like to take this opportunity to correct that impression.

The statements of fact in the motion, and in the opinion of the Louisiana Supreme Court, which are adopted in

the motion, give the impression that violence was imminent and that the demonstrators were causing it. This characterization entirely ignores the fact that every witness testified that Rev. Cox was in complete control of the student demonstrators at all times (T. 38, 107, 257, 318, 355), and that the inspector in charge of police believed that the officers were able to handle "any situation that should arise". The demonstration was orderly (see e.g., T. 267-268), and it followed the program which had been shown to the authorities as well as the instructions given by the Chief of Police (T. 516-517). The only "disorderliness" of the demonstration was the instruction by Rev. Cox to the demonstrators to sit at segregated lunch counters until they were served (T. 364, 376). It is said by the Louisiana Supreme Court that Rev. Cox, in his speech to the students, "built them up emotionally"; the fact is, as the witness agreed, that Rev. Cox counseled non-violence even in the face of violence.

This Court is not the proper forum in which argue over the actual occurrences of the demonstration, but we must point out that the record does not support the contention that this was a situation of imminent violence, to which a narrowly-drawn or narrowly-construed regulatory statute might properly have been applied.

The really important point is that no such narrow statute was applied in this case. The trial court held that it was "inherently dangerous and a breach of the peace" (T. 545) for fifteen hundred colored people to protest in downtown Baton Rouge against segregation. The Louisana Supreme Court defined a breach of the peace in the follow-

ing language: "* * * to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet * * *." Yet this is one of the statutes which are characterized at page 9 of the motion as having a "fixed, definite, and commonly understood meaning * * *." On the contrary, this is language which is so general, under the decisions in *Edwards* v. *South Carolina*, 372 U. S. 229 (1963) and *Terminiello* v. *Chicago*, 337 U. S. 1 (1948), as to act as a restraint on freedom of speech and assembly. In this case, moreover, the language has been deliberately used to restrain peaceful speech and assembly.

Appellee makes much of the fact that the students occupied a large part of the sidewalk across from the courthouse, and that they allegedly "failed to move on" when the sheriff instructed them to do so.* These allegations, however, are at best peripheral to the true issues in this case. It matters very little what Rev. Cox said, in response to the sheriff, because the fact is that the instruction to move on had been given by the sheriff because he disapproved of Rev. Cox's speech advocating a sit-in (T. 364). Whether or not the students occupied the sidewalk matters very little, because the authorities were willing to permit

* It is claimed that Rev. Cox said "Don't move" when the sheriff instructed the students to move on. This in itself is an extraordinary conclusion to draw from the evidence; only three witnesses recollected this phrase (T. 58, 275, 354) and five others remembered no such thing (T. 82, 106, 286, 315, 373). Rev. Cox himself recollected saying "Don't run" (T. 521ff.) a phrase with an altogether different meaning. The trial judge avoided the whole question by holding that it was "inherently dangerous" for Negroes to demonstrate in front of the courthouse. In the end this dispute over the facts serves only to illustrate the difficulties presented by appellee's characterization of the demonstration.

them to occupy that sidewalk, until Rev. Cox advocated a sit-in. The statutes against breach of the peace and obstructing the sidewalk, whether valid on their face or not, were applied in a discriminatory way, so as to deny to appellant the equal protection of the laws and due process of law. *Niemotko* v. *Maryland*, 340 U. S. 268 (1951).

For the foregoing reasons, and for the reasons stated in the jurisdictional statement, the motion of appellee, the state of Louisiana, should be denied.

Respectfully submitted,

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